



# MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 43

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## REGISTRATION OF OUT-OF-STATE SELLERS AND OTHER PERSONS

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This bulletin is intended solely as advice to assist persons in determining and complying with their obligations under Maine tax law. It is written in a relatively informal style and is intended to provide guidance to business entities located outside of Maine in determining whether they are required to register as a retailer with Maine Revenue Services (“MRS”). Taxpayers are responsible for complying with all applicable tax statutes and rules. Although bulletins issued by MRS do not have the same legal force and effect as rules, justifiable reliance upon this bulletin will be considered in mitigation of any penalties for any underpayment of tax due. This bulletin is current as of the last revision date shown at the end of the document.

The Sales and Use Tax Law is found in Part 3 of MRSA (“Maine Revised Statutes Annotated”), Title 36. Both Title 36 and all MRS rules may be seen by clicking on “laws and rules” on the MRS website.

Section 1754-B of the Maine law sets forth the mandatory Sales and Use Tax registration provisions for sellers (and certain agents and contractors of sellers) of tangible personal property or taxable services. Businesses that are subject to mandatory registration or wish to register voluntarily should obtain an “Application for Sales and Use Tax Registration” from MRS. Once registered, the business must collect and remit sales or use tax in accordance with the Sales and Use Tax Law.

### 1. MANDATORY SELLER REGISTRATION

The following persons shall register with MRS and collect and remit sales and use taxes in accordance with the Sales and Use Tax Law.

**A. Place of Business in Maine.** Every seller that maintains a place of business in this State must register. A “place of business” includes, without limitation, any office, manufacturing facility, distribution facility, warehouse or storage facility, or sales or sample room.

**B. Retail Sales Made or Solicited Within Maine.** Every seller that does not maintain a place of business in this State but that makes retail sales in Maine, or that solicits orders for such sales through salespeople in this State. Salespeople include employees and persons who act as representatives, solicitors, salespersons, or independent selling agents for the seller.

**C. Leasing Tangible Personal Property Located in this State.** Every lessor engaged in the leasing of tangible personal property located in this State that does not maintain a place of business in this State but makes retail sales to purchasers from this State. A lessor is engaged in making retail sales in Maine when it executes a “lease in lieu of purchase” in Maine, accepts a lessee’s option to purchase in Maine, or sells in Maine previously rented property.

**D. Other Substantial Physical Presence in Maine.** Every seller that has a substantial physical presence in Maine. The level of physical presence that is “substantial” is the amount sufficient to satisfy U.S. constitutional standards. In general, substantial physical presence would include the seller’s ownership of, or lease interest in, real property in Maine, the seller’s purposeful use in Maine of personal property to conduct any part of its business, and the activity in Maine of the seller’s employees and contractors or others associated with maintaining a market for the seller’s products. Some examples of such activities include, but are not limited to:

- Delivery of tangible personal property by the seller into Maine by means of the seller’s own vehicles.
- Delivery of tangible personal property by the seller into Maine by means of a 3rd party carrier other than an interstate common carrier.
- Repair or installation of tangible personal property by the seller’s own employees or by a third party contracted by the seller.

**E. Limited Exclusions.** The seller registration statute provides limited exclusions for certain activities that, by themselves, do not establish a presence in Maine sufficient to require registration. These limited “safe harbor” activities are:

- Solicitation of business in Maine through catalogs, flyers, telephone or electronic media when delivery of ordered goods is effected by the US mail or by an interstate 3rd-party common carrier;
  - EXAMPLE: ABC Corporation is an out-of-state corporation with no activity in Maine other than soliciting orders worldwide on its website hosted outside of Maine, and its sales to Maine customers are delivered to Maine by common carrier.
- Attending trade shows, seminars or conventions in Maine;
  - EXAMPLE: ABC Corporation is an out-of-state corporation that sends employees annually to a seminar in Maine for training purposes only. The employees do not solicit sales while in Maine.
- Holding a meeting of a corporate board of directors or shareholders or holding a company retreat or recreational event in Maine;
- Maintaining a bank account or banking relationship in Maine; or
- Using a vendor in Maine for printing.

**F. Presumptive Requirement to Register in Certain Cases.** Section 1754-B(1-A) creates a rebuttable presumption that a seller, not already registered under § 1754-B(1), is nevertheless engaged in the business of selling tangible personal property or taxable services for use in this State and is required to register as a retailer with MRS under the following situations:

- i. An affiliate of the seller has a substantial physical presence in this State;

EXAMPLE: If a seller operating a dotcom is an affiliate of a corporation that operates a bricks-and-mortar retail store in Maine, both the affiliate and the dotcom sellers are required to register in Maine.

- ii. Any person, other than a common carrier, that has a substantial physical presence in this State and conducts any of the following activities;

- (1) Sells a similar line of products as the seller and does so under a business name that is the same or similar to that of the seller;

EXAMPLE: ABC Company Maine, a retail store in Maine, sells similar line of products as ABC Company USA. ABC Company USA is required to register in Maine and collect and remit sales/use tax in accordance with the Sales and Use Tax Law.

- (2) Maintains an office, distribution facility, warehouse or storage place or similar place of business in Maine to facilitate the delivery of property or services sold by the seller to the seller's customers;

EXAMPLE: Sales by an out-of-state retailer are fulfilled by an unaffiliated distribution facility located in Maine. The out-of-state retailer is required to register in Maine and collect and remit sales/use tax in accordance with the Sales and Use Tax Law.

- (3) Uses trademarks, service marks or trade names in Maine that are the same or substantially similar to those used by the seller;

EXAMPLE: ABC Corporation operates a number of fast food chain franchises in Maine using the trademark and trade name of the out-of-state franchisor. The franchisor is required to register in Maine and collect and remit sales/use tax in accordance with the Sales and Use Tax Law.

- (4) Delivers, installs, assembles or performs maintenance services for the seller's customers within Maine;

EXAMPLE: ABC Corporation contracts with a person in Maine to install and/or repair equipment that ABC has sold to a Maine customer. ABC Corporation is required to register in Maine and collect and remit sales/use tax in accordance with the Sales and Use Tax Law.

(5) Facilitates the seller's delivery of property to customers in Maine by allowing the seller's customers to pick up property sold by the seller at an office, distribution facility, warehouse, storage place or similar place of business maintained by the person in Maine; or

EXAMPLE: Out-of-state manufacturer makes a sale to a Maine customer and instructs the Maine customer to pick up the merchandise at a distributor's warehouse located near the customer in Maine. The out-of-state manufacturer is required to register and collect and remit sales/use tax in accordance with the Sales and Use Tax Law.

(6) Conducts any activities in Maine that are significantly associated with the seller's ability to establish and maintain a market in Maine for the seller's sales.

EXAMPLE: Person in Maine provides dog training seminars across the state. The person has an arrangement with a national dog food company to promote its product during the seminars. This activity establishes and maintains a market in Maine. The national dog food company is required to register and collect and remit sales/use tax in accordance with the Sales and Use Tax Law.

A seller may rebut these presumptions by demonstrating that the person's activities in Maine are not significantly associated with the seller's ability to establish or maintain a market in Maine for the seller's sales.

iii. A seller enters into an agreement with a person under which the person, for a commission or other consideration, while within Maine:

(1) Directly or indirectly refers potential customers, whether by a link on an Internet website, by telemarketing, by an in-person presentation or otherwise, to the seller; and

(2) The cumulative gross receipts from retail sales by the seller to customers in Maine who are referred to the seller by all persons with this type of an agreement with the seller are in excess of \$10,000 during the preceding 12 months.

EXAMPLE: Pursuant to an agreement with an out-of-state seller, a Maine business places a link on its website that sends its customers to the out-of-state seller's website. The seller's agreement with the Maine business is that the Maine business receives a 10% commission on any sales originating from that referral. The out-of-state seller has this agreement with a number of businesses within Maine. The out-of-state seller is required to register in Maine and collect and remit sales/use tax in accordance with the Sales and Use Tax Law if their sales to customers in Maine through this type of agreement with Maine businesses exceeded \$10,000 during the preceding 12 months.

Entering into an agreement for the placement of advertising alone does not by itself establish a requirement to register.

A seller may rebut this presumption by submitting proof that the person with whom the seller has an agreement did not engage in any activity within Maine that was significantly associated with the seller's ability to establish or maintain its market in Maine during the preceding 12 months. The proof may consist of sworn, written statements from all of the persons within Maine with whom the seller has an agreement stating that they did not engage in any solicitation in Maine on behalf of the seller during the preceding 12 months. These statements must be provided and obtained in good faith.

NOTE: A person who enters into an agreement with a seller to refer customers by a link on an Internet website is not required to register solely because of the existence of the agreement.

## **2. MANDATORY REGISTRATION BY OTHER PERSONS**

The following persons acting under contract with, or otherwise acting on behalf of, a seller making sales in Maine must register with MRS and collect and remit sales and use taxes accordingly.

- A.** Every person that makes sales in Maine on behalf of a seller outside of this State that does not hold a valid registration certificate.
- B.** Every person engaging in sales or distribution activity in this State on behalf of a seller and who receives compensation by reason of the principal's sales made outside Maine for use or storage in Maine.
- C.** Every person that acts as a manager or operator of, or who otherwise collects rents for, a hotel, rooming house, or tourist or trailer camp in this State.
- D.** A person acts as a broker or consignment agent and makes retail sales in Maine on behalf of the owner of the property or provider of the services.
- E.** Every person required to register as a condition of doing business with the State pursuant to 5 MRSA § 1825-B(14).
- F.** Every person that holds a wine direct shipper license under 28-A MRSA § 1403-A.

## **3. VOLUNTARY REGISTRATION**

36 MRSA § 1756 provides for voluntary registration of businesses not subject to mandatory registration. Section 1756 provides the option of limiting the liability of voluntary registrants to tax actually collected. In order to take advantage of this provision, the business should make it clear in its application that registration is being made voluntarily under section 1756.

#### **4. ADDITIONAL INFORMATION**

The information in this bulletin addresses some of the more common questions regarding the Sales and Use Tax Law faced by your business. It is not intended to be all-inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to:

**MAINE REVENUE SERVICES  
SALES, FUEL & SPECIAL TAX DIVISION  
P.O. BOX 1060  
AUGUSTA, ME 04332-1060 TEL: (207) 624-9693  
TTY: 7-1-1**

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